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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 CONSTANCE CHANDLER  
12 on behalf of D.C., minor child,

No. C 07-2141 CRB

13 Plaintiff,

**MEMORANDUM AND ORDER**

14 v.

15 MICHAEL J. ASTRUE,  
Commissioner of Social Security,

16 Defendant.  
17 \_\_\_\_\_/

18 Plaintiff Constance Chandler (“Chandler”) filed an application for supplemental  
19 security income (“SSI”) payments under Title XVI of the Social Security Act (“the Act”) on  
20 behalf of her minor child, D.C. (“minor claimant”). Her application was initially denied by  
21 the Social Security Administration (“SSA”) and on reconsideration. She then timely filed a  
22 request for a hearing before an administrative law judge (“ALJ”).

23 Chandler and the minor claimant appeared, represented by counsel, and testified at the  
24 hearing on March 27, 2006. Following the hearing, the ALJ issued a written decision dated  
25 July 5, 2006, denying Chandler’s application. The ALJ found that the minor claimant was  
26 not disabled within the meaning of the Act and regulations. Chandler timely filed a request  
27 for review, but the Appeals Council denied review.  
28

1 Chandler now seeks judicial review in this Court under 42 U.S.C. § 405(g). For the  
2 reasons set forth below, the Court DENIES Chandler's motion for summary judgment and  
3 GRANTS defendant's cross-motion for summary judgment.

#### 4 **I. FACTUAL BACKGROUND**

##### 5 **A. Minor Claimant's Age and Education**

6 The minor claimant was born on August 10, 1991, and on the date of the hearing he  
7 was a 15-year-old high school freshman at Deer Valley High School in the Antioch Unified  
8 School District. (TR 75, 194). At the time, he was enrolled in special education classes for  
9 science, English and mathematics. (TR 194). Chandler testified that her son has been  
10 enrolled in special education classes since he was in first grade. (TR 237). He has no past  
11 work experience, nor has he engaged in any substantial gainful activity since the filing of his  
12 SSI application. (TR 20).

##### 13 **B. Minor Claimant's Disability Claim**

14 Chandler alleges that the minor claimant's impairment is the specific learning  
15 disability of an auditory processing disorder. (TR 145). She alleges that he has been  
16 affected with the disorder since late 1999, when he was eight-years-old. (TR 96). A medical  
17 expert testified that the minor claimant's impairment causes him to have difficulty processing  
18 and retaining auditory information. (TR 242). For example, Chandler claims the minor  
19 claimant has trouble following basic instructions, and that she has to repeat herself or show  
20 him step-by-step how to complete minor tasks that require more than one step, such as  
21 unpacking groceries and placing them in the refrigerator. (TR 224).

22 The minor claimant's treating physician indicated that the minor claimant also has a  
23 hearing problem in his left ear, and that he has impaired distance vision. (TR 230, 233). The  
24 minor claimant was assessed at having an IQ of 84. Although the minor claimant is in  
25 special education classes at school for a learning disability and speech problems, he has  
26 never been to therapy with a mental health professional and there is no history of psychiatric  
27 hospitalizations. (TR 147). At the time of his hearing before the ALJ he was not on any  
28 medications. (TR 147).

**C. Plaintiff's Hearing Testimony**

At the administrative hearing Chandler testified that the minor claimant is the third oldest of her seven children. (TR 219). Although she is aware that children sometimes purposefully ignore their parents, she believes the minor claimant frequently does not listen to her because he has trouble comprehending what she is saying. (TR 223). She frequently has to repeat herself or ask one of his siblings to supervise the minor claimant while he attempts to complete a minor task. (TR 224). For example, if she asks the minor claimant to take out the garbage and place the cans by the curb, she usually asks one of his siblings to go with him to make sure the task is done correctly. (TR 224). In addition, he has severe difficulty understanding how to complete tasks that require more than one step. (TR 224). In those instances, she must repeat herself multiple times, or instruct him to complete each task one segment at a time. (TR 224). Despite the difficulty with which he completes chores around the house, the minor claimant is able to maintain concentration for long periods of time while playing video games with his siblings. (TR 228). He is able to, and does indeed, sometimes play such games all day on Saturdays and Sundays, the only days she typically allows him to play. (TR 228).

Chandler believes the minor claimant reads at a third or fourth grade level, and that he understands words like "health," "mad," and "love," but that he does not understand longer words like "mathematics." (TR 235). She would place the minor claimant's mental capacity somewhere between that of her five-year-old twins and her eleven-year-old son. (TR 235).

**D. Minor Claimant's Hearing Testimony**

The minor claimant understands that he is in special education classes at school because he has a hard time reading and spelling, and with "all kinds of school work." (TR 200-201). It takes him about one hour to walk to school when he does not get a ride with his brother's girlfriend. (TR 199).

The minor claimant enjoys playing video games and he believes he is good at them. (TR 203). When he plays against an opponent, he almost always beats him or her. (TR 203). However, he does not always understand all of the text that appears at the bottom of the

1 screen, but he understands some of it. (TR 214). He only sometimes understands movies  
2 that he watches, and science movies in particular confuse him. (TR 203). Others have  
3 trouble understanding him at times, and he attributes this to his habit of speaking too quickly.  
4 (TR 206).

5 He took six classes last year. (TR 207). Of those classes, three were special  
6 education classes: math, English and basic science. (TR 207). The remaining three classes  
7 were not special education classes: health careers, cartoon and physical education. (TR 207).  
8 He was supposed to receive an "F" in health careers because he was unable to complete a  
9 required portfolio assignment, but instead received a "D" because of his good behavior. (TR  
10 207). He received a "D" and an "F" in physical education because he refused to get dressed  
11 for the class. (TR 208). He does not always complete his English homework because he  
12 does not understand what is required of him. (TR 211). He does not receive any homework  
13 in his math class. (TR 213).

14 He plays on his school football team in the wide receiver and free safety positions.  
15 (TR 206). He does not have any problems seeing or catching the ball. (TR 206). He has two  
16 favorite professional football teams, and he understands and keeps track of their standings in  
17 the league. (TR 217).

#### 18 **E. Medical Evidence**

19 As part of his enrollment in special education classes at his high school, the minor  
20 claimant is provided with a number of accommodations. In his most recent annual  
21 Individualized Education Program ("IEP") assessment, dated December 16, 2005, the minor  
22 claimant was provided with the following accommodations: additional time to complete tests  
23 and assignments, the ability to take tests and quizzes for his non-special education classes in  
24 a special education-designated room, receive special assistance as needed from special  
25 education teachers to complete requirements for his non-special education classes, reduced or  
26 shortened written assignments, the ability to use dictionaries, word lists and spell check to  
27 assist with spelling, the ability to sit near the front of the room in class, and the ability to  
28 receive a passing grade of "C" in any course that he attends 90 percent of the time, and in

1 which he completes 80 percent of his assignments. (TR 127).

2 In the minor claimant's most recent psycho-educational report, dated June 1, 2005,  
3 which lists the results of a series of cognitive and achievement tests he was given, he  
4 performed below-average in his "verbal cluster" test, low in his "non-verbal reasoning"  
5 cluster, and average in his "spatial cluster." (TR 120). On June 4, 2004, when the minor  
6 claimant was 12-years-old, he was examined by a speech and language pathologist. (TR  
7 150-152). On the oral and written language scales, his listening comprehension score was in  
8 the fourth percentile, with the age equivalence of a seven-year-old. (TR 151). His  
9 expressive language score also ranked within the fourth percentile, again with the age  
10 equivalence of a seven-year-old. (TR 151).

### 11 **1. Medical Expert's Hearing Testimony**

12 Dr. Moses Grossman ("medical expert"), a pediatrician licensed to practice in the state  
13 of California, examined the minor claimant's record, but he had no prior contact with  
14 Chandler or the minor claimant before the hearing. (TR 238). Based on the record, and from  
15 the testimony at the hearing, the medical expert testified that he believes the minor claimant  
16 suffers from a "serious learning disability." (TR 242). The minor claimant has "trouble with  
17 processing and retaining auditory information" and that while he is "better on visual  
18 information," there is a "problem there, too." (TR 242).

19 The medical expert found some of the information in the record and the test results  
20 "rather confusing and contradictory" because he would not "have guessed that his IQ is 84;"  
21 rather, it would have been lower. However, the tests were done accurately, and by qualified  
22 people. (TR 243). The minor claimant's school record is consistent with the testimony  
23 received at the hearing. (TR 244-245).

24 In the medical expert's opinion, the minor claimant does not meet or medically equal  
25 the SSA's definition of mental retardation. (TR 246). However, the minor claimant is  
26 "marked" in at least one of the six domains for assessing functional equivalence to a listed  
27 impairment. (TR 246). In particular, the minor claimant is "marked" in the area of  
28 "Acquiring and Using Information," despite his "relatively good IQ tests." (TR 246). He

1 qualifies his finding by adding that this is “where the IQ test[] is out of line because” the  
2 minor claimant “doesn’t deserve a ‘marked’ if his IQ is truly 84.” (TR 246). Despite this  
3 contradiction, he would still assess the minor claimant as being “marked” in this area. (TR  
4 246).

5 The medical expert would also assess the minor claimant as being “somewhere in  
6 between” “marked” and “less than marked” in the domain of “Attending and Completing  
7 Tasks.” (TR 247). This domain is related to the perceived difficulty the minor claimant has  
8 in following instructions that require more than one step. (TR 247). This domain also  
9 addresses the minor claimant’s refusal to do much homework, and with the fact that the  
10 minor claimant will only complete the first of a multi-step instruction, and then “waits or  
11 doesn’t do anymore.” (TR 247).

12 The minor claimant is not “marked” in any other areas. In the domains of “Interacting  
13 and Relating with Others,” “Moving about and Manipulating Objects,” “Self-Care” and  
14 “Health and Physical well-being,” the minor claimant “had no problems” and was “less than  
15 marked.” (TR 248).

## 16 II. STANDARD OF REVIEW

17 This Court’s jurisdiction is limited to determining whether the Social Security  
18 Administration’s denial of benefits is supported by substantial evidence in the administrative  
19 record. 42 U.S.C. § 405(g). A district court may overturn a decision to deny benefits only if  
20 it is not supported by substantial evidence or if the decision is based on legal error. Andrews  
21 v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995); Magallenes v. Bowen, 881 F.2d 747, 750 (9th  
22 Cir. 1989). The Ninth Circuit defines substantial evidence as “more than a mere scintilla but  
23 less than a preponderance; it is such relevant evidence as a reasonable mind might accept as  
24 adequate to support a conclusion.” Andrews, 53 F.3d at 1039. Determinations of credibility,  
25 resolution of conflicts in medical testimony and all other ambiguities are to be resolved by  
26 the ALJ. Id.; Magallenes, 881 F.2d at 750. The decision of the ALJ will be upheld if the  
27 evidence is “susceptible to more than one rational interpretation.” Andrews, 53 F.3d at 1040.  
28

### III. DISCUSSION

Under the Act, a child under the age of 18 is considered “disabled” and eligible for SSI benefits if he has a medically determinable physical or mental impairment which results in marked and severe functional limitation, and which has or can be expected to last for a continuous period of at least 12 months or results in death. 42 U.S.C. § 1382c(a)(3)(C).

#### A. The ALJ’s Decision

The ALJ must conduct a three-step sequential evaluation process to determine whether a minor claimant is disabled and thus entitled to SSI payments. 20 C.F.R. § 416.924. First, the ALJ determines whether the child is engaged in substantial gainful activity. 20 C.F.R. § 416.924(b). If not, the ALJ next determines whether the child’s impairment or combination of impairments is “severe.” If a child’s impairment(s) is so “slight” that it causes no more than minimal functional limitations, it will be determined that the child is not disabled. 20 C.F.R. § 416.924(c). Finally, the ALJ then determines whether the minor claimant’s impairment(s) meets or medically equals in severity the criteria for an impairment listed in the Listing of Impairments at 20 C.F.R Part 404, Subpart P, Appendix 1, or whether the impairment(s) is functionally equivalent in severity to a listed impairment. If the child does not have an impairment(s) that medically meets or equals the listed impairments, or that is not functionally equal in severity to a listed impairment, he will not be considered “disabled” under the meaning of the Act, and will not be eligible for SSI benefits. 20 C.F.R. § 416.924(d).

Here, the ALJ found that the minor claimant has not engaged in substantial gainful activity during any part of the period under adjudication. The ALJ also found that the minor claimant does indeed have medically determinable severe cognitive and communicative impairments. He found that the impairments are “severe” within the meaning of 20 C.F.R. § 416.924(c) because they are greater than slight abnormalities that cause more than minimal functional limitations. However, the ALJ found that the minor claimant’s impairment does not meet or medically equal in severity the criteria for any listed impairment at 20 C.F.R., Part 404, Subpart P, Appendix 1. Therefore, the ALJ adjudged the minor claimant not



1 disabled within the meaning of the Act.

2 **B. Plaintiff's Challenge to the ALJ's Decision**

3 Chandler contends that the ALJ's determination that the minor claimant's impairment  
4 does not meet or medically equal in severity the criteria for any listed impairment is either  
5 not supported by substantial evidence in the record or was made applying improper legal  
6 standards. Chandler's argument is without merit.

7 There are four ways in which a minor claimant can be found to have an impairment  
8 that meets or medically equals in severity a listed impairment, and only one is at issue here.  
9 Certain functional limitations in six broad domains can cause a minor claimant to be  
10 considered disabled within the Act. 20 C.F.R. § 416.926a(b)(1). In order to meet this  
11 requirement, a minor claimant's impairment must result in an "extreme" limitation in at least  
12 one domain, or result in a "marked" limitation in *at least two* domains. 20 C.F.R.  
13 § 416.926a(d). The domains evaluated in this category are: (1) Acquiring and using  
14 information; (2) Attending and completing tasks; (3) Interacting and relating with others; (4)  
15 Moving about and manipulating objects; (5) Self-care; (6) Health and physical well-being.  
16 20 C.F.R. § 416.926a(b)(1).

17 A limitation is considered "marked" in a particular domain if: (1) the impairment  
18 interferes seriously with the child's ability to independently initiate, sustain, or complete  
19 activities; (2) the impairment is "more than moderate" but "less than extreme;" (3) in the use  
20 of standardized tests as the measure of functional abilities, the minor claimant must have a  
21 valid score that is at least two, but less than three, standard deviations or more below the  
22 mean; or (4) in the health domain, the child has frequent illness due to the impairment or  
23 frequent exacerbations of the impairment that result in significant documented symptoms or  
24 signs (that is, occurring on average of three times a year and lasting longer than two weeks  
25 each time or the equivalent). 20 C.F.R. § 416.926a(e)(2).

26 Here, the ALJ agreed with the medical expert that the minor is "marked" in only one  
27 domain of functioning, and therefore the minor claimant is not disabled under the Act.  
28 Chandler challenges this finding, claiming that it is not supported by substantial evidence and



1 is based on legal error. In particular, Chandler notes that in the domain of “Attending and  
2 completing tasks,” the medical expert testified that the minor claimant is between marked  
3 and less than marked, but the only reason he found the claimant is “less than marked” is  
4 because the medical expert believes the category in which he found the claimant is  
5 marked–Acquiring and using information–in this case measures the same limitation as  
6 “Attending and completing tasks.” In other words, the claimant suffers from the same  
7 problem with respect to both domains. (TR 254). The medical expert then testified that he  
8 would leave it to the ALJ to determine whether the claimant should be considered “marked”  
9 in both domains when it is based on the same problem. (*Id.*) Thus, argues Chandler, the  
10 ALJ’s finding that the minor claimant is not marked in the “Attending and completing tasks”  
11 domain is not supported by substantial evidence.

12 The Court disagrees. While the record includes evidence that the minor claimant has  
13 trouble completing multi-step instructions, such as taking out the groceries and then placing  
14 them in the refrigerator, there is other evidence that demonstrates he is capable of performing  
15 multi-step tasks. The ALJ specifically noted that the claimant plays on a football team  
16 “which is a sophisticated sort of project that involves lots of rules and lots of obligations and  
17 you have to do this and don’t do that and run in this direction and not that direction and turn  
18 around and catch the ball at a certain time. And all this is a complicated project to learn how  
19 to be a decent football player and he’s capable of doing that.” (TR 260). The minor claimant  
20 and his mother also both testified that the minor claimant can concentrate on video games for  
21 extended periods of time, and that he also frequently beats opponents. These examples  
22 support the ALJ’s determination that the minor claimant’s impairment does not “interfere[]  
23 severely” with his “ability to independently initiate, sustain or complete activities.” 20  
24 C.F.R. § 416.926a(e)(2). *See Andrews*, 53 F.3d at 1040 (the ALJ’s decision must be upheld  
25 if it is susceptible to more than one rational interpretation).

26 The ALJ did not apply improper legal standards in making his determination. Plaintiff  
27 argues that the ALJ mistakenly failed to address the medical expert’s question as to whether  
28 he could give a “marked” limitation for both domains of “Acquiring and using information”

1 and "Attending and completing tasks" in light of his belief that the two domains address  
2 many of the same limitations. (TR 254). Chandler contends that it was legal error for the  
3 ALJ to rely on the medical expert's opinion when it appears the expert was unclear about the  
4 difference between the two domains. However, the medical expert merely testified that it is  
5 difficult to fit learning disabilities into the six domains provided under the SSA. (TR 259).

6 Accordingly, the ALJ did not err in finding that the minor claimant was not disabled  
7 within the meaning of the Act.

#### 8 IV. CONCLUSION

9 For the foregoing reasons, the ruling of the Commission is AFFIRMED.

10 **IT IS SO ORDERED.**

11  
12 Dated: December 12, 2007



13  
14 CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE